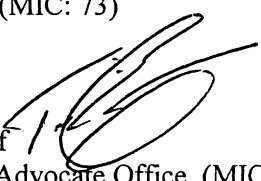


Memorandum

To : Mr. Ramon J. Hirsig
Executive Director (MIC: 73)

Date : May 19, 2005

From : Todd Gilman, Chief 
Taxpayers' Rights Advocate Office (MIC: 70)

Subject : Pro bono Legal Assistance Informal Issue Paper

Recently you requested an Informal Issue Paper on the progress of the Board's development of a "Pro bono Legal Assistance Pilot Program." The Appeals Division worked with the budget office to obtain costs to dedicate one PY to this new program.

I have attached the Informal Issue Paper resulting from our research.

Please contact me if you have any questions or require additional information.

cc: Honorable John Chiang, Chairman
Honorable Claude Parrish, Vice Chairman
Honorable Bill Leonard
Ms. Betty T. Yee Acting Board Member
Honorable Steve Westly, State Controller, C/O Ms. Marcy Jo Mandel (MIC 73)
Ms. Audrey Noda (4th LA)
Mr. Neil Shah (3rd LB)
Ms. Barbara Alby (MIC 78)
Ms. Sylvia Tang (MIC 71)
Mr. Jefferson Vest, Assistant Chief Counsel, Appeals Division (MIC 85)
Ms. Selvi Stanislaus, Acting Assistant Chief Counsel, Tax and Fee Division (MIC 82)
Mr. Reed Schreiter, Appeals Division (MIC 85)
Executive Team

Attachment

- ☐ For Information
☒ For Discussion
☐ For Decision Making

BOARD OF EQUALIZATION
INFORMAL ISSUE PAPER

**PRO BONO LEGAL ASSISTANCE
PILOT PROGRAM**

Issue:

Many underrepresented taxpayers lack an understanding of the tax laws and the Board's rules, policies, and decision-making process.

Background:

The Board requested the Taxpayers' Rights Advocate investigate how underrepresented taxpayers could receive assistance with their appeals prior to and during a Board hearing.

Discussion:

The Board does not provide legal assistance to underrepresented taxpayers who have filed an appeal. The Taxpayers' Rights Advocate Office and the Legal/Appeals Division are therefore developing a pilot program in conjunction with McGeorge School of Law to offer underrepresented taxpayers an opportunity to seek free legal assistance.

Properly trained and supervised law students are an appropriate resource for underrepresented taxpayers. Qualified law students from McGeorge already participate in a legal internship program at the Board where they receive valuable training in legal appeal matters and gain experience in reviewing appeals briefs, exhibits, and evidence submitted in appeals cases and in researching and preparing proposed decisions for the Board's consideration. The interns also introduce appeals to the Board at oral hearings. The proposed expanded program would provide the interns "hands on" experience and knowledge about preparing an appeal and representing taxpayers before the Board.

The existing internship curriculum, which consists of one academic semester, would form the basis for training law students to provide representation to underrepresented taxpayers. The expanded program would also include a second academic semester. During the second semester, the clinic intern, under the supervision of a Board Appeals attorney (see the below explanation of how a conflict of interest will be avoided), would meet with the taxpayer/client, solicit and gather evidence with respect to the taxpayers' position, prepare legal briefs, advise the taxpayer as to the strengths and weaknesses of the case, and attend and present the case at an oral hearing before the full Board.

Appeals Division management met with faculty from McGeorge in March 2005 and proposed the intern/clinical program described above. The representatives of McGeorge were very enthusiastic about this proposal, although they raised a few concerns. The McGeorge faculty expressed concern about appeals pending at the conclusion of an intern's clinical program. After discussions with the Appeals Division, the faculty and the Appeals Division agreed that any such pending cases could be reassigned to a new intern without disrupting representation of the taxpayer. If no qualified interns are available to take a case, the supervising Appeals attorney could assume the task. The McGeorge faculty also expressed concern that, as proposed, the supervising Appeals attorney would not be physically present at the McGeorge clinic for consultation with the interns during all the proposed clinic hours, which initially will consist of several hours one day per week. This concern has been resolved, as Mr. Hirsig has approved the allocation of an Appeals attorney to be physically present at the McGeorge clinic for the required number of hours. Another concern was the potential liability associated with the representation of taxpayers. McGeorge already operates a free legal clinic staffed by trained and qualified law students assisting underrepresented members of the community in other legal matters. McGeorge therefore provides insurance coverage for students providing free legal services.

The pilot program has little or no risk for the Board. The Appeals Division's research indicates that the Board can avoid liability for referring taxpayers to the McGeorge legal clinic by observing several precautions, which will be built into the program. Further, McGeorge has never been sued with respect to the legal clinic's dealings in other legal matters, despite its operations for many years. The cases referred will also concern relatively simple issues, small amounts, and low-income taxpayers. Thus, the potential liability will probably not exceed \$1,000. Finally, the Appeals Division will maintain a conflict of interest database to track case assignments so that an Appeals attorney who advises the intern(s) would never be involved in a potentially related appeal in his/her capacity as an Appeals attorney. The Appeals Division would be responsible for overseeing the program while the Taxpayers' Rights Advocate would perform periodic reviews to ensure no conflict of interest or violation of taxpayers' rights occur.

Potential cases could come from existing appeals that need further briefing and by referrals from senior citizen centers, non-profit tax clinics, and/or any other legal clinics that do not specialize in tax appeal matters.

The pilot program calls for implementation of representation in Franchise and Income Tax Appeals first since income tax law is part of the existing curriculum taught at McGeorge, with Business Tax Appeals being phased in over time after adequate training and experience is determined by the Appeals Division and McGeorge.

Analysis of Pros and Cons

Pros:

- Due process provided for underrepresented taxpayers
- Conformity with the Board's mission statement
- Conformity with the Board's Strategic Plans Goals
- Greater understanding of the tax laws and their application by the taxpayer
- Progressive new program that will reflect positively on the Board
- Better preparation would lead to better arguments by taxpayers on tax cases

- Allowing underrepresented taxpayers access to free legal advice could reduce the number of hearings before the Board
- Reduction in cases due to representation during appeal conferences
- Less misunderstanding between the taxpayer and the Board

Cons:

- Cost and time to the state to dedicate staff (*Please refer to attachment*)
- Perceived conflict of interest
- Less staff time spent on appeal cases
- Negative perception from professionals in similar professions
- Availability of students for program

Pilot program expansion:

The Taxpayers' Rights Advocate and the Appeals Division are talking with other law schools in Southern and Northern California to develop a statewide resource program. The Taxpayers' Rights Advocate has already been in contact with two Southern California schools to determine their interest in the program.

- **Additional Opportunities:**

The Taxpayers' Rights Advocate has contacted the California Society of CPA's and the Los Angeles County Bar Association, State Bar Taxation Section Liaisons to establish an outreach and education program. Both organizations have demonstrated some interest in establishing pro se tax clinics for taxpayers. This will augment the existing pilot program.

Report to the Board:

The Taxpayers' Rights Advocate and the Appeals Division will report back to the Board in six months on the progress of the pilot program.

Initial Start-up cost and expenses :

Tax Counsel III Position

Three hours per week in both Northern and Southern California for a total of six attorney hours per week = .2 PY.

The total cost (compensation and overhead) for this is approximately \$20,000 per year. At this stage, however, this time will come from existing attorneys and only represent a reallocation of existing workload.

Long-term cost and expenses:

One full time attorney (Tax Counsel III), including compensation, O E&E, office space, training, travel between Northern and Southern California, laptop computer with docking station, software, telephone = \$153,000 the first year and \$135,000 per year there after.

There will be no additional cost with the reallocation of workload for the one half-time attorney position.